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## CORRESPONDENCE.

## DEATH BY WRONGFUL ACT—LIMITATION.

*Editor Virginia Law Register :*

Referring to your note on Statute of Limitations in the September number of the VIRGINIA LAW REGISTER, p. 330, I thought a short report of the following decision by the judge of the Law and Equity court would be of interest to your readers :

On October 30, 1896, a young boy, named Russell Stewart, was run over and killed by a street car on Baker street in the city of Richmond. On June 18, 1897, his administrator, "by virtue of the statute in such cases made and provided" (Code, 1887, sec. 2903), brought suit against the Richmond Railway and Electric Company. One of the defences was that the wrong company had been sued, and counsel for defendant sought to have this issue tried without a jury. This proposition, however, was declined by the plaintiff's counsel, who was alarmed by the defence set up, and let the case be continued from term to term until the following April. On February 8, 1898, the legislature amended section 2934 of the Code of Virginia in relation to Limitation of Actions, and provided, among other things, that if in any *pending* cause or in any action or suit hereafter commenced within due time in any of the courts of this commonwealth, the plaintiffs have proceeded against the wrong defendant and judgment is rendered against the plaintiff solely upon such ground, in every such case, notwithstanding the expiration of the time within which a new action or suit must otherwise have been brought, the same may be brought within one year after such judgment against the plaintiff.

On March 23, 1898, the following verdict was rendered by the jury :

"We, the jury, upon the issues joined, find for the defendant solely upon the ground that the action is against the wrong defendant," and judgment was entered accordingly.

On April 9, 1898, infant's administrator brought a new suit against a new defendant—the Richmond and Manchester Railway Company. The declaration set out the facts that the boy was injured on the 30th day of October, 1896, and that death ensued from his injuries on the day and year aforesaid.

Counsel for the defendant company cravedoyer of the writ and demurred to the declaration and each count thereof and to the writ then shown to him. The demurrer was argued on the 25th of last July, and the court, taking time to consider of this judgment, on the 13th of this month, sustained the demurrer, but, I regret to say, delivered no written opinion.

Counsel for the defence claimed that the action being brought under section 2903 the right of action expired at 12 o'clock on the night of October 30, 1897, certainly at 12 o'clock of October 31, 1897, and that the action brought April 9, 1898, was six months too late.

Counsel for the plaintiff relied upon the act of February 8, 1898, before referred to, amending section 2934 of the Code of 1887. I have been unable to se-

cure a copy of the authorities cited by counsel for the plaintiff, but he relied chiefly on the case of *Campbell v. Holt*, 115 U. S. 620.

Counsel for the defendant claimed that the limitation of one year was not a limitation upon the *remedy* merely, but upon the *right of action*, no such right existing at common law. On the point that he could raise the question by demurrer, he relied on *Lambert v. Ensign Manufacturing Co.* (W. Va.), 26 S. E. 431; see 3 Va. Law Reg. 63.

On the point that this limitation was one affecting the right, as well as the remedy, the following authorities were cited:

Code, 1887, secs. 2903, 2936; *The Harrisburg*, 119 U. S. 199, 214; *Tiffany's Death by Wrongful Act*, secs. 120, 121 and notes; 13 Am. & Eng. Ency. of Law, 689-90; *McCartney v. Potomac Electric Company* (Va.), 26 S. E. 419, 421; 4 Va. State Bar Assoc. Rep. 133; *Johnson v. Gill*, 27 Gratt. 595; 1 Bart. Law Prac. 79 and note 3; 2 Bart. Law Prac. 1395 and note 6; 1 Wood on Lim. 43-44 and note 1; *Id.*, p. 45 and notes 2, 3, 4 and 5; *Id.*, p. 35-6 and note 1, citing 25 Ohio State, 629; U. S. Rep. (Lawyer's Co-op. Ed.), Book 13, p. 194 and notes.

Very truly,

October 21, 1898.

M.

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"AN ENGLISHMAN IN A VIRGINIA COURT."

Editor *Virginia Law Register*:

DEAR SIR:—I have noticed in the October REGISTER, on page 403, an article entitled "An Englishman in a Virginia Court," in which the author of the publication therein quoted, Mr. Bird, is spoken of as a "romancer," with a strong implication that he has not told the truth. I know that the REGISTER only desires to see fair play, and, as I happened to be an observer of the proceedings therein related, I desire to vouch for the substantial accuracy of the account given by Mr. Bird. The only difference between my recollection of the proceedings and that related by Mr. Bird is that an adjournment which he mentions, was given on account of a funeral and not on account of a baseball match, although the baseball match was mentioned by a number of the jurors at the time of the adjournment, and many did attend the game.

I remember very distinctly that while a witness was on the stand testifying, two news boys went amongst the jury and sold them the afternoon papers. Also that during the trial a soldier who had received an alligator from Florida brought it in, put it on the judge's desk, and that the jurors and the judge played with the alligator, and that this took place, not during an interim, but while active steps were being taken in the case.

It therefore seems to me that it is the province of the REGISTER to criticise not the one who relates the facts, but the court which permits such things to occur.

Of Mr. Bird's observations concerning the speeches of counsel during the trial, he doubtless gave his own views, and of these I have nothing to say. I simply write this letter in the interests of justice.

October 15, 1898.

OBSERVER.